

Vladimir and Leila appealed their cases to the Alabama Court of Civil Appeals which affirmed the trial court's decision without opinion. They subsequently petitioned the Alabama Supreme Court for certiorari review but that request was also denied.

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### **REASONS FOR GRANTING THE PETITION**

The Court should grant this petition because the Petitioners have been denied the due process of law by the Alabama justice system. As a result, both were deprived of their property, which is clearly repugnant to the Constitutional guarantees afforded to all by virtue of the Fourteenth Amendment to the United States Constitution. Ironically, the Petitioners are natives of the Soviet Union, which was historically viewed as a symbol of repression and an oppressor of civil rights. It was the state courts of Alabama, however, which stripped them of their liberties and refused to mete out justice in this case.

#### **I. The Alabama judicial system did not have jurisdiction to deprive the Petitioner, Leila Allafi, of her property because she did not have sufficient minimum contacts with the State to confer jurisdiction upon her.**

Leila Allafi is a resident of Kazakhstan; she is not now nor has she ever been a resident of the United States. She did not subject herself to the jurisdiction of the Alabama courts and she did not maintain the requisite minimal contacts to allow the Court to assert *in personam* jurisdiction over her.

The seminal case regarding when a state may exercise personal jurisdiction over a nonresident defendant is *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). In that case, the Court determined that a person must have sufficient "minimum contacts" with a forum state in order for jurisdiction to be conferred.

These minimum contacts must be such that maintaining a suit and requiring the nonresident to defend in said suit does not offend the "traditional notions of fair play and substantial justice." Id. at 316. The Judgment entered here requiring Leila Allafi to forego property to which she is rightfully due was a direct conflict with this precedent. Not only did Leila Allafi not have the required contacts with the State of Alabama but the requirement to force her to participate in litigation in a foreign land, in which everyone spoke a foreign language, was certainly neither substantial justice nor fair play.

Nadejda's attempts to serve Leila Allafi with the notice of the original action were clothed with suspicion from the onset. The reliance solely on "transient jurisdiction" is misplaced. *Burnham v. Superior Court*, 495 U.S. 604 (1990). The Due Process Clause should afford some degree of predictability for potential defendants so that they may structure their responses and behaviors accordingly. The touch stone Leila should have been allowed to rely upon remains: "did she purposefully establish the necessary minimum contacts and did this conduct and connection with the State of Alabama cause her to reasonably anticipate being summoned into Court there." See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

Leila Allafi did not enjoy any privileges of living in Alabama. Therefore, the Courts of that State should not deprive her of her fundamental right to due process by stripping her of property that was rightfully conveyed as repayment of a debt that was lovingly bestowed.

This Court has lessened the burden placed upon a State when exercising jurisdiction over time. The prime concept of *International Shoe* functions to protect defendants against litigating in inconvenient forums and refuses to allow States to reach out to persons who have not, as discussed previously, made themselves available. Following the evolution of the telephone, fax, voicemail, and internet one may ask how could any forum be one of inconvenience with the technology to help a litigant? This Court has held firm, stating:

"even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." *Hanson v. Deckla*, 357 U.S. 235, 251 (1958).

Leila asks this Court to restore to her the fundamental rights that are afforded to her by the United States Constitution and to grant certiorari review in this case based on the lack of *in personam* jurisdiction.

**II. The Petitioners were denied due process of law because the settlement agreement that was enforced was procured as the result of duress and coercion.**

A contract can be repudiated if it was procured by duress or coercion. *Orient Shipping Rotterdam B.V. v. Hugo Neu & Sons, Inc.*, 918 F.Supp. 806, 812 (S.D.N.Y. 1996). In order to prevail on such a claim, the person seeking to repudiate the contract must show: duress by physical compulsion, duress by threat or duress by undue influence. *First Nat'l Bank of Cincinnati v. Pepper*, 454 F.2d 626, 632 (2d Cir. 1972).

In this case, Leila and Vladimir were subjected to duress. They were unfamiliar with the American judicial system. They relied on their attorneys to guide them through this process. Vladimir's attorney forcefully compelled him to agree to the settlement by telling him that his sister could lose everything if he did not assent thereto. Leila's attorney told him that there would be a special place in heaven for him since he was agreeing to the settlement. Leila was coerced into agreeing to the settlement because she could not understand the proceedings or the magnitude of that to which she was agreeing. Neither of the Petitioners exercised his or her free will while making this agreement.

"The burden on a party seeking to avoid contractual obligations on the grounds of . . . duress 'increases proportionately with the delay in initiating suit or otherwise repudiating the contract in question.'" *VKK Corp. v. Nat'l Football League*, 244 F.3d 114, 123 (2d Cir. 2001) (quoting *International Halliwell Mines, Ltd. v. Cont'l Copper & Steel Indus., Inc.*, 544 F.2d 105, 108 (2d Cir. 1976)). The Petitioners met their burden in this case. Vladimir called

his attorney and his half-sister's attorney less than twenty-four hours after the agreement had been recited into the record and informed them that he and Leila did not agree with what had happened the previous day. No judgment had been entered yet. No judgment had even been drafted. Further evidence of the coercive nature of the attorneys' actions in this case lies in the fact that the settlement agreement was never provided to Vladimir and Leila for their signatures. The attorneys knew that their clients would not sign and therefore, they circumvented the process.

**III. The Settlement Agreement is due to be set aside because the Petitioner was mentally ill at the time that he purportedly agreed to same and he was denied an opportunity to have a meaningful hearing regarding his mental condition.**

The Husband filed a Motion to Alter, Amend or Vacate the judgment of divorce on October 30, 2003. Similarly, Leila filed such a motion on October 23, 2003. Notice was given that Leila's motion was set for hearing on December 23, 2003 but no such indication was given regarding the Husband's post judgment motion. At the December 23, 2003 hearing, counsel for the Husband indicated that the motion had yet to be set for hearing.

Counsel for the Husband explained that his client suffered from severe depression at the time the purported settlement agreement was entered into and offered to "bring [the Husband's] psychiatrist before the Court to talk about his mental condition that day." Counsel further offered to submit an affidavit from said psychiatrist but the trial court prejudged the proffered evidence, stating

that it would not consider such testimony unless the doctor saw the Husband the day before the settlement was entered into.

In this case, the Husband was denied any meaningful hearing on his postjudgment motion because no notice was provided to counsel regarding same. To add insult to injury, the Husband was precluded from offering evidence regarding his mental state. Because he was not made aware that his motion was set for hearing, his psychiatrist was not readily available to testify at the December 23, 2003 hearing. When the Husband offered to procure said testimony by an affidavit, that trial court indicated that it would refuse to accept same unless certain conditions were met. The obvious problem with such a position is that the Husband's mental state stands at the very heart of this matter. The extent of the Husband's depression is the polestar by which this case must be judged. The trial court eviscerated the Husband's basis for postjudgment relief without affording a full hearing and thereby denied him due process.

At the postjudgment stage of this proceeding, the Husband asserted that he was severely depressed when he entered the purported settlement agreement. So grave was his condition that he was taking prescribed medications to control same. When the Husband's mental condition is coupled with his unfamiliarity with the court system and his evident language barriers, the resulting agreement is clearly a product of duress and constitutes a deprivation of due process.

"Looking at the subject in the light of reason, it is difficult to perceive how one incapable of understanding, and acting in the ordinary affairs of life, can make an instrument the efficacy of

which consists in the fact that it expresses his intention, or, more properly, his mental conclusions. The fundamental idea of a contract is that it requires the assent of two minds. But a lunatic, or a person *non compos mentis*, has nothing which the law recognizes as a mind, and it would seem, therefore, upon principle, that he cannot make a contract . . . ”

*Dexter v. Hall*, 82 U.S. 9, 20, 21 L.Ed. 73, 15 Wall. 9 (1872).

Sufficient evidence existed in this case to establish that the Husband did not understand the nature of the agreement to which he purportedly agreed because of his mental condition at the time that it was recited in court. Courts “will afford protection to the person and his estate where any species of mental unsoundness is clearly shown to incapacitate him from protecting either himself or his estate against his own weakness or the artifice of others.” *McDonald v. Boslow*, 363 F.Supp. 493, 496 (D. Md. 1973) (quoting *Purdum v. Lilly*, 182 Md. 612, 35 A.2d 805 (1944)). The Alabama courts erred by forcing Vladimir to live with the ramifications of his decision and in so doing, prejudiced him severely.

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## **CONCLUSION**

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

**VLADIMIR G. RADJABI-MOUGADAM**  
7596 Foxfire Drive  
Huntsville, Alabama 35802  
256-883-9526

**LEILA ALLAFI**  
c/o VLADIMIR G. RADJABI-MOUGADAM  
7596 Foxfire Drive  
Huntsville, Alabama 35802  
256-883-9526

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STATE OF ALABAMA – JUDICIAL DEPARTMENT  
THE COURT OF CIVIL APPEALS  
OCTOBER TERM, 2004-2005

2030491

Vladimir G. Radjabi-Mougadam v. Nadejda N. Radjabi-Mougadam. Appeal from Madison Circuit Court (DR-01-1695).

2030492

Leila Allafi v. Nadejda N. Radjabi-Mougadam.  
Appeal from Madison Circuit Court (DR-01-1695).

BRYAN, Judge.

203491 – AFFIRMED. NO OPINION.

(Filed JUN. 24, 2005)

See Rule 53(a)(1) and (a)(2)(C), Ala. R. App. P.; *Neal v. Neal*, 856 So. 2d 766, 778 (Ala. 2002); *Pierce v. Helka*, 634 So. 2d 1031, 1033 (Ala. Civ. App. 1994); *Gozza v. Goza*, 470 So. 2d 1262, 1264 (Ala. Civ. App. 1985); and § 34-3-21, Ala. Code 1975.

The appellee's request for an attorney's fee is denied.

203492 – AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(C), Ala. R. App. P.; *Jennings v. Jennings*, 647 So. 2d 777 (Ala. Civ. App. 1994); and § 34-3-21, Ala. Code 1975.

The appellee's request for an attorney's fee is denied.

Crawley, P.J., and Thompson, Pittman, and Murdock, JJ., concur.

John H. Wilkerson, Jr., Clerk of the Court of Civil Appeals of Alabama, do hereby certify the foregoing is a

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full, true and correct copy of the instrument(s) herewith  
set out as same appears of record in said court.

Witness my hand this 24th day of June, 2005

/s/ John H. Wilkerson, Jr.

Clerk, Court of Civil Appeals of Alabama

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**STATE OF ALABAMA  
COURT OF CIVIL APPEALS**

John H. Wilkerson, Jr.

300 Dexter Avenue

Clerk

Montgomery, AL

[SEAL]

36104-3741

Ruby Crowe

Phone (334) 242-4093

Assistant Clerk

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September 23, 2005

2030491

Vladimir G. Radjabi-Mougadam v. Nadejda N. Radjabi-Mougadam (Appeal from Madison Circuit Court: DR 01-1695).

2030492

Leila Allafi v. Nadejda N. Radjabi-Mougadam (Appeal from Madison Circuit Court: DR 01-1695).

You are hereby notified that the following action was taken in the above cause, by the Court of Civil Appeals:

Applications for Rehearing Overruled. No opinion written on rehearing.

/s/ John H. Wilkerson, Jr.

John H. Wilkerson, Jr.

Clerk, Court of Civil Appeals

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**IN THE SUPREME COURT OF ALABAMA**

[SEAL]

November 10, 2005

**1050050**

Ex parte Vladimir G. Radjabi-Mougadam. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: Vladimir G. Radjabi-Mougadam v. Nadejda N. Radjabi-Mougadam) (Madison Circuit Court: DR 01-1695; Civil Appeals: 2030491).

**CERTIFICATE OF JUDGMENT**

**Writ Denied**

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

STUART, J. – Nabers, C.J., and See, Harwood, and Bolin, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 10th day of November, 2005

/s/ Robert G. Esdale, Sr  
Clerk, Supreme Court of Alabama

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**IN THE SUPREME COURT OF ALABAMA**

[SEAL]

November 10, 2005

**1050049**

Ex parte Leila Allafi. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: Leila Allafi v. Nadejda N. Radjabi-Mougadam) (Madison Circuit Court: DR 01-1695; Civil Appeals: 2030491, 2030492).

**CERTIFICATE OF JUDGMENT**

**Writ Denied**

\ The above cause having been duly submitted, IT IS  
CONSIDERED AND ORDERED that the petition for writ  
of certiorari is denied.

STUART, J. – Nabers, C.J., and See, Harwood, and  
Bolin, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 10th day of  
November, 2005

/s/ Robert G. Esdale, Sr  
Clerk, Supreme Court of Alabama

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IN THE CIRCUIT COURT FOR  
MADISON COUNTY, ALABAMA

NADEJDA N.	)	
RADJABI-MOUGADAM,	)	
Plaintiff,	)	
vs.	)	CIVIL ACTION NO.
VLADIMIR G.	)	DR2001-1695BEW
RADJABI-MOUGADAM	)	
and LEILA ALLAFI,	)	
Defendants.	)	

**Final Judgment of Divorce**

THIS CAUSE, coming on to be heard, was submitted upon the Complaint of the Plaintiff, **NADEJDA N. RADJABI-MOUGADAM**, the Answer and Counterclaim of the Defendant, **VLADIMIR G. RADJABI-MOUGADAM**, the Answer, Counterclaim and CrossClaim of the Defendant, **LEILA ALLAFI**, the Answers to the Counterclaims by the Plaintiff, **NADEJDA N. RADJABI-MOUGADAM**, the stipulation of the parties by and through their attorneys in open Court on the record of the Court and the assent of each party thereto entered into the Court record, and the Testimony on behalf of the Plaintiff, and the Court giving due consideration thereto is of the opinion that the a [sic] Final Judgment of Divorce incorporating the stipulation of the parties entered upon the record of the Court in open Court is due to be entered. It is, therefore,

**ORDERED, ADJUDGED, and DECREED** by the Court that the bonds of matrimony heretofore existing between the Husband and the Wife be, and the same are

hereby dissolved and that they are forever divorced one from the other for and on account of **INCOMPATIBILITY OF TEMPERAMENT**. It is further,

**ORDERED, ADJUDGED, and DECREED** by the Court that all of the right, title, claim and interest of the Defendant, **VLADIMIR G. RADJABI-MOUGADAM**, in and to that certain real property, together with the contents thereof, located in Baldwin County, Alabama and described as "Unit 1406, Pelican Pointe,,A condominium, located in Baldwin County, Alabama, according to that certain Declaration of Condominium of Pelican Pointe, A Condominium, together with exhibits thereto, including the By-Laws of Pelican Pointe Condominium Association, all dated March 7, 1995, and recorded in Miscellaneous Book 82, Pages 323, et seq., in the Office of the Judge of Probate of Baldwin County, Alabama, TOGETHER WITH the appropriate undivided percentage interest in the common areas and facilities declared in said Declaration of Condominium to be an appurtenance to the above described unit" is DIVESTED from the said **VLADIMIR G. RADJABI-MOUGADAM** and VESTED in **NADEJDA N. RADJABI-MOUGADAM**, subject however to the mortgage existing upon said property to SouthTrust Mortgage Corporation and recorded in Real Property Book 621, Page 951 in the Office of the Judge of Probate of Baldwin County, Alabama, which the said Plaintiff shall pay and indemnify and hold harmless the said Defendant, **VLADIMIR G. RADJABI-MOUGADAM**, therefrom. It is further,

**ORDERED, ADJUDGED AND DECREED** that the Defendant, **LEILA ALLAFI**, is divested of an undivided one-half interest in and to that certain real property, together with undivided 1/2 interest the contents thereof,

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described as "Unit 1E16, Phoenix V, A Condominium, according to that certain Declaration of Condominium and all Exhibits thereto of record in the Office of the Judge of Probate of Baldwin County, Alabama recorded in Miscellaneous Book 87, Page 1625, et seq. and as amended by instrument recorded in Miscellaneous Book 92, Page 665, et seq.; TOGETHER WITH the undivided interest in the common elements declared to be an appurtenance thereto in said declaration as amended." and said undivided one half interest is VESTED in **NADEJDA N. RADJABI-MOUGADAM**. It is further,

**ORDERED, ADJUDGED AND DECREED** that:

**LEILA ALLAFI** and **NADEJDA N. RADJABI-MOUGADAM** are to list the said Unit 1E16, Phoenix V (as further described in the preceding paragraph) for sale with a Realtor® in Baldwin County, Alabama as agreed upon by said parties at a listing price to be determined by a market analysis and to sell such property. Upon the sale, **NADEJDA N. RADJABI-MOUGADAM** shall receive from the net proceeds of sale one-half (1/2) plus an additional sum of Eight Thousand and No/100 Dollars (\$8,000.00). Until such time as the unit shall sell, **LEILA ALLAFI** and **NADEJDA N. RADJABI-MOUGADAM** shall share equally the net rental income therefrom. Pending the sale of the property, **NADEJDA N. RADJABI-MOUGADAM** shall have a lien against the undivided interest of **LEILA ALLAFI** for the payment of the \$8,000.00 set forth above. In the event one party is willing to accept an offer that the other is not, the owner who does not wish to sell for that price shall have the option to purchase the interest of the other owner for one half of sum the offer would net the parties after deducting the sales commission and ordinary and usual costs of sale to be agreed upon by the

parties attorneys, less, in the event that **NADEJDA N. RADJABI-MOUGADAM** shall be the purchasing owner, the sum of \$8,000.00. It is further,

**ORDERED, ADJUDGED AND DECREED** that **NADEJDA N. RADJABI-MOUGADAM** is awarded the following personal property from the house of the parties located at 7596 Foxfire Drive, Huntsville, Alabama:

**RUSTOM'S BEDROOM**

1 Queen Size Bed  
1 Bedside table  
1 Desk  
1 Book Case  
1 Chest of Drawers  
1 Comforter

\*1 Table - in Study)

\*1 Chair - in Study)

\*1 Bookcase - in Study)

**KITCHEN**

1 Table  
6 Chairs  
1 Knife set  
1 Kitchen Aid mixer  
1 Refrigerator  
12 Wine and Water  
    Crystal Glasses  
12 Dessert Crystal  
Miscellaneous crystal,  
cups, etc.

**ANVAR'S BEDROOM**

1 Queen Size Bed  
1 Chest of Drawers  
1 Bedside Table  
1 Book Case  
1 Desk and Chair  
1 Comforter

1 Kitchen Aid mixer

1 Refrigerator

12 Wine and Water

    Crystal Glasses

12 Dessert Crystal

Miscellaneous crystal,  
cups, etc.

**ZARENA'S BEDROOM**

**AND STUDY**

1 Queen Size Bed  
1 Bedside table  
1 Dresser  
1 Chest of Drawers  
1 Make-up Table  
1 Stool  
1 Comforter

1 Grandfather Clock

1 Plant Stand

1 Flower Arrangement

Miscellaneous decorative  
and souvenir items from  
her family and from  
Ukraine and which have  
sentimental value to her.

1 set of Noritake china  
from Dining Room

It is further **ORDERED, ADJUDGED AND DECreed** that the Defendant, **LEILA ALLAFI**, shall have and recover of the Defendant, **VLADIMIR G. RADJABI-MOUGADAM**, the sum of Eighty Six Thousand, Six Hundred, Seventy-Seven and No/100 (\$86,677.00) Dollars. It is further,

**ORDERED** that all other claims asserted in this matter, whether by complaint, counterclaim, crossclaim or otherwise are **DISMISSED WITH PREJUDICE**.

**ORDERED** that either **VLADIMIR G. RADJABI-MOUGADAM** or **NADEJDA N. RADJABI-MOUGADAM** may again contract marriage as provided by the law in this State, but not until after sixty (60) days from the date hereof except to each other; and should an appeal be taken (which must be instituted within forty-two (42) days from this Decree or from the date that a post-trial motion is denied), neither **VLADIMIR G. RADJABI-MOUGADAM** or **NADEJDA N. RADJABI-MOUGADAM** shall again, except to each other during the pendency of such appeal, contract marriage as provided by the law in this State. It is further.

**ORDERED** that the costs herein are taxed as paid.

**DONE**, this 30th day of September, 2003.

/s/ Bruce E. Williams  
Circuit Judge

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Approved for Entry:

**ABLES, BAXTER, PARKER &  
HALL, P.C.**  
Attorneys for Plaintiff

By: /s/ James T. Baxter  
James T. Baxter III  
A member of the Firm

**STEPHEN'S MILLIROWS,  
HARRISON & GAMMONS, P.C.**  
Attorneys for Defendant,  
**VLADIMIR G. RADJABI-  
MOUGADAM**

By: /s/ Paul L. Millirons  
Paul L. Millirons  
A Member of the Firm

/s/ William P. Burgess  
William P. Burgess  
Attorney for Defendant,  
**LEILA ALLAFI**

[SEAL]

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(2)  
No. 05-1014

FILED

MAR 13 2006

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

In The  
**Supreme Court of the United States**

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VLADIMIR G. RADJABI-MOUGADAM,  
LEILA ALLAFI,

*Petitioners,*

v.

NADEJDA N. RADJABI-MOUGADAM,

*Respondent.*

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**On Petition For A Writ Of Certiorari  
To The Court Of Civil Appeals  
Of Alabama**

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**BRIEF IN OPPOSITION**

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THOMAS E. PARKER, JR.  
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P.O. Box 165  
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256-533-3740

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## STATEMENT OF THE CASE

On December 13, 2001, Nadejda N. Radjabi-Mougadam (hereinafter "NADEJDA") filed a complaint in the Circuit Court for Madison County, Alabama, against Vladimir G. Radjabi-Mougadam (hereinafter "VLADIMIR") and Leila Allafi (hereinafter "LEILA") seeking a divorce from VLADIMIR, to have the transfer by VLADIMIR to his sister, LEILA, of a house in Huntsville, Alabama, and two condominiums in Baldwin County, Alabama, set aside as being made without consideration and with the intent to hinder, delay and defraud NADEJDA and, thereafter, to make an equitable and fair division of the real and personal property of NADEJDA and VLADIMIR, with the statement that the fraudulent transfers occurred at a time when LEILA was physically present in the State of Alabama and received knowledge of the transfer to her claiming a homestead exemption in the real property located in Madison County, Alabama, and therefore subject to the jurisdiction of the Court. (C.R. 5-9). The Defendant, VLADIMIR, filed an answer on March 5, 2002 (C.R. 19-20).

The Defendant, LEILA, was served with a copy of the Alias Summons and Complaint on October 1, 2002, by a process server (Supplemental C.R. 3-4) appointed by the Court on September 9, 2002 (C.R. 2), and, LEILA authorized William P. Burgess, Jr. to accept service for her in accordance with ARCP 4(h) and he did on October 23, 2002 (Supplemental C.R. 5). On December 18, 2002, LEILA filed a response incorporating therein only a motion under Rule 12(b)(6) and without raising, at that time, the jurisdiction of the court over her person or the jurisdiction of the court over the subject matter of the litigation (C.R. 28-34).

On June 19, 2003, LEILA filed a permissive counter-claim against NADEJDA and a cross-claim against VLADIMIR alleging that she was the sister of VLADIMIR, the sister-in-law of NADEJDA, and acting on her own behalf and as administrator of the estate of her deceased father and seeking a judgment for monies alleged to have been loaned to NADEJDA and VLADIMIR and further seeking a declaration that the transfers of real property to her were for a fair and adequate consideration and seeking the imposition of a constructive trust over the marital assets of NADEJDA and VLADIMIR (C.R. 57-62). VLADIMIR filed a counterclaim on July 23, 2003, against NADEJDA (C.R. 67-68). NADEJDA answered the counter-claim of LEILA and the counterclaim of VLADIMIR by filing an answer to each in open court showing a certificate of service date of September 22, 2002 (C.R. 99-101). On September 29, 2003, the written testimony of NADEJDA was filed with the court (C.R. 102-103) and, on September 30, 2003, in accordance with the complaint of NADEJDA, answer and counterclaim of VLADIMIR, answer, counter-claim and cross-claim of LEILA, answers to the counter-claims by NADEJDA and the stipulation of the parties through their attorneys in open court and the assent entered into the court record and the testimony of NADEJDA, the court entered its Final Judgment of Divorce (C.R. 104-107), with each party's authorized attorney indicating thereon their approval for entry.

On October 21, 2003, LEILA filed a motion seeking a new trial or to set aside the judgment under Rule 59(a)(2), Alabama Rules of Civil Procedure, raising, for the first time, that she questioned the court's personal jurisdiction over her and further stating that the stipulation entered

in open court did not represent a meeting of the minds and attaching an affidavit from LEILA which stated that her connection to Alabama was having been dispatched to Alabama by her father to collect some money owed to him and her by VLADIMIR and receiving in payment, by swap, the condominium and house (C.R. 123-132), and on October 30, 2003, VLADIMIR filed a motion pursuant to Rule 59(e), altering, amending or vacating the judgment as to him asserting that, at the time of the settlement stipulation entered into the record, he was under the influence of prescription medication that had been prescribed by his psychiatrist for the treatment of depression and that the agreement entered into by him was unfair and would be inequitable and contrary to the evidence that would be presented at a trial (C.R. 137-138). On December 19, 2003, NADEJDA filed a response to the motions filed by the Defendants which incorporated an affidavit of LEILA's initial attorney and the affidavit of the attorney for NADEJDA (C.R. 145-160). LEILA submitted her deposition in support of the motion to vacate judgment on December 19, 2003 (C.R. 161-194) and filed a memorandum in support of her motion on January 7, 2004 (C.R. 195-244). On January 9, 2004, NADEJDA filed a "Motion to Strike, or in the Alternative, For Additional Time to Respond" with regard to the memorandum in support of LEILA's motion to vacate judgment which brought to the court's attention that attached were additional "evidence" which might or might not be admissible upon a trial (C.R. 245-246) which was granted by the court on January 15, 2004 (C.R. 245).

The trial court denied VLADIMIR and LEILA's post-trial motions on January 15, 2004, and entered an Order on Motion to Reconsider Motion to Strike Granted by Trial

Court on January 29, 2004 (C.R. 253-254). On February 11, 2004, VLADIMIR filed a Motion to Reconsider the Order denying the motion to alter, amend or vacate (C.R. 255-256). Both LEILA and VLADIMIR filed Notices of Appeal on February 26, 2004 (C.R. 262-263 for LEILA and C.R. 1-2 [Case No. 2030491] for VLADIMIR). VLADIMIR and LEILA filed their briefs on September 23, 2004.

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### STATEMENT OF FACTS

NADEJDA does not believe the Statement of the Facts set forth in LEILA's brief is either an accurate recitation of "facts" nor are most of the "facts" contained therein necessary for this Court's evaluation of this case. The recitation of facts contained in VLADIMIR's brief is closer to a recitation of facts that may be necessary for this Court's determination, but does not contain facts with respect to the appeal of LEILA. Therefore, Appellee will set forth a statement of the facts incorporating the facts necessary for both appeals.

The husband VLADIMIR, the wife, NADEJDA, and the sister, LEILA, all appeared in open court in the Circuit Court of Madison County at the call of the trial docket on September 22, 2003, each accompanied by his or her attorney of record. (R.T. 08/22/03 1-18) LEILA was accompanied by an interpreter, as she spoke no English. The trial court took pains to qualify the interpreter. (R.T. 09/22/03 307)

Before the trial began, the attorneys announced that they had reached a settlement of the case. (R.T. 09/22/03 7-8) The terms of the settlement were recited for the record by NADEJDA's attorney. The attorney stated that

NADEJDA would receive certain property in certain rooms of the marital residence, which he referred to as being "listed on Exhibit A to the suggested relief in Plaintiff's Exhibit 1." (R.T. 09/22/03 10) VLADIMIR's interest in Unit 1406, Pelican Pointe Condominium in Baldwin County was divested from him and vested in NADEJDA, who was to assume the mortgage and hold VLADIMIR harmless. (R.T. 09/22/03 11) One-half of LEILA's interest in another condominium in Baldwin County, Phoenix V, was divested from her and vested in NADEJDA. That unit was to be listed for sale with a realtor and sold at a price to be recommended by the realtor. (R.T. 09/22/03 12) NADEJDA was to receive one-half of the proceeds of sale plus \$8,000. LEILA was awarded a judgment against VLADIMIR for \$86,677. (R.T. 09/22/03 15) NADEJDA's attorney offered Plaintiff's Exhibit 1 into evidence without objection. (R.T. 09/22/03 16) The record on appeal does not contain a copy of Plaintiff's Exhibit 1.

LEILA (through the interpreter hired by her), VLADIMIR and NADEJDA each affirmed that their agreement had been read into the record properly (R.T. 09/22/03 16) and NADEJDA's attorney was to draft the judgment and have it approved by LEILA's and VLADIMIR's attorneys prior to presentation to the court (R.T. 09/22/03 16). The Final Judgment of Divorce as entered on September 30, 2003, contained an approval by NADEJDA's attorney, VLADIMIR's attorney and LEILA's attorney endorsed thereon (C.R. 107).

A hearing was held on the motions filed by both VLADIMIR and LEILA on December 23, 2003, with NADEJDA being present through her attorney, LEILA being present through her attorney (R.T. 12/23/03 2) and VLADIMIR being present in person as well as by counsel

(R.T. 12/23/03 3). No testimony or other evidence was presented at that hearing, although VLADIMIR was given the opportunity to attach matters supporting the contention that he was under a mental disability on the day of the hearing to a suggested order (R.T. 12/23/03 27), although none is contained in this record on appeal.

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### SUMMARY OF ARGUMENT

Nadejda N. Radjabi-Mougadam (hereinafter "NADEJDA") submits that the matters raised by both Leila Allafi (hereinafter "LEILA") and Vladimir G. Radjabi-Mougadam (hereinafter "VLADIMIR") in their briefs fail to adequately address the reasons for affirmance of the trial court's action in denying the motions filed post-judgment for a new trial.

While LEILA argues that the court lacked personal jurisdiction over her under the provisions of Rule 4.2 of the Alabama Rules of Civil Procedure (prior to its last amendment), NADEJDA points out to the Court that personal jurisdiction was obtained, not necessarily by constructive service, but certainly by personal service upon LEILA in the state of Alabama and, further, and that LEILA's appearance at various stages (by filing a Rule 12(b)(6) motion without contesting *in personam* jurisdiction, by filing a permissive counterclaim and cross-claim and by voluntarily appearing in court as well as by having authorized the acceptance of service by an attorney) are all sufficient to give the court *in personam* jurisdiction.

With regard to LEILA's and VLADIMIR's claims and assertions that they are not bound by the consent

judgment, it is clear that there is a portion of the evidence that was before the trial court that has not been included in the record on appeal and, under the rule of law in this state, it will be presumed that it was sufficient to support the court's determination. Interestingly, additionally, both LEILA and VLADIMIR appeared at court assisted by able trial counsel. Both of these attorneys reviewed the written judgment that was submitted to the trial court and, after some "tweaking" by VLADIMIR's lawyer with regard to provisions relating to LEILA, both attorneys signed indicating their approval of the written document for entry by the court. Notwithstanding the presumption with regard to non-included evidence, it is clear that lawyers, acting with authority from their clients, reviewed, modified and ultimately approved the final judgment to which LEILA and VLADIMIR object.

Finally, as to VLADIMIR's claim that he was under a mental condition so as to justify the court setting aside the final judgment of divorce, there is no evidence, either at the time of trial, the time of the settlement, nor, indeed, by sworn facts at the filing of the motion to alter or amend or at the hearing on the same or at any other place in the record to indicate, suggest or certainly prove to the extent required by law, that VLADIMIR was *non compos mentis*.

*In toto*, the appeals by LEILA and VLADIMIR lack both factual and legal substance. The delay occasioned by the appeal has (with the Court taking judicial notice of the effects of Hurricane Ivan) perhaps caused significant problems with regard to the real estate at Orange Beach and Gulf Shores involved in this matter.

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## ARGUMENT

Nadejda N. Radjabi-Mougadam (hereinafter "NADEJDA") presents, in one brief, arguments relating to the claims asserted by the Appellant, Leila Allafi (hereinafter "LEILA"), and the Appellant, Vladimir G. Radjabi-Mougadam hereinafter "VLADIMIR"), as follows:

**I. The Alabama judicial system did have jurisdiction to deprive the Petitioner, Leila Allafi, of her property.**

Petitioners' brief discusses the two-prong test for determining whether service in accordance with the long arm statute of Alabama (actually Rule 4.2 of the Alabama Rules of Civil Procedure) is sufficient to give Circuit Court of this state *in personam* jurisdiction.

In this particular case, where the real estate is located in the state of Alabama, there is no question but that the Circuit Court of Madison County had the subject matter jurisdiction necessary to set aside a fraudulent conveyance. *Naff v. Fairfield - American Nat. Bank*, 231 Ala. 388, 165 So. 224 (Ala. 1936). See also Section 12-11-31, 1975 Ala. Code.

With the issue of subject matter jurisdiction properly disposed of, it is also clear that the Circuit Court of Madison County, Alabama, had *in personam* jurisdiction of LEILA with regard to the claim asserted by NADEJDA seeking to have transfers of real property from VLADIMIR (and in one instance, also from NADEJDA, by VLADIMIR acting under a power of attorney) as fraudulent transfers. Alabama's statement with regard to jurisdiction over non-residents is set forth in Rule 4.2, Alabama Rules of Civil Procedure (prior to its last amendment), and deals with